

May 29, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LESLIE BARGEL,

Plaintiff,

v.

PRINCIPAL LIFE INSURANCE

COMPANY, a foreign insurer,

Defendant.

No. 2:18-cv-00223-SAB

**ORDER DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court is Defendant's Motion for Summary Judgment, ECF No. 9. The motion was heard without oral argument. Plaintiff is represented by Robb Grangroth. Defendant is represented by Patrick Cronin.

Background

Plaintiff's mother, JoAnn Bargel, purchased a life insurance policy in 1990. Plaintiff, Leslie Bargel, is a beneficiary of the policy. JoAnn Bargel died shortly after Defendant Principal Life Insurance Company denied her application for reinstatement after it terminated the policy for failing to make payments on the policy. Plaintiff disputes that no payments were received and asserts that Defendant wrongfully terminated the policy.

Plaintiff sued in Spokane County Superior Court and Defendant removed the action to the Eastern District of Washington. Plaintiff is asserting four claims under Washington law: (1) breach of contract; (2) bad faith; (3) violation of the

**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1**

1 Consumer Protection Act; and (4) violation of the Insurance Fair Conduct Act.

2 Defendant now moves for summary judgment.

3 **Motion Standard**

4 Summary judgment is appropriate if the “pleadings, depositions, answers to
5 interrogatories, and admissions on file, together with the affidavits, if any, show
6 that there is no genuine issue as to any material fact and that the moving party is
7 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). There is no genuine
8 issue for trial unless there is sufficient evidence favoring the non-moving party for
9 a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477
10 U.S. 242, 250 (1986). The moving party has the initial burden of showing the
11 absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317,
12 325 (1986). If the moving party meets its initial burden, the non-moving party
13 must go beyond the pleadings and “set forth specific facts showing that there is a
14 genuine issue for trial.” *Anderson*, 477 U.S. at 248.

15 In addition to showing there are no questions of material fact, the moving
16 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
17 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is
18 entitled to judgment as a matter of law when the non-moving party fails to make a
19 sufficient showing on an essential element of a claim on which the non-moving
20 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party
21 cannot rely on conclusory allegations alone to create an issue of material fact.
22 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

23 When considering a motion for summary judgment, a court may neither
24 weigh the evidence nor assess credibility; instead, “the evidence of the non-
25 movant is to be believed, and all justifiable inferences are to be drawn in his
26 favor.” *Anderson*, 477 U.S. at 255.

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**ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT ~ 2**

1 **Analysis**

2 Here, questions of material fact exist regarding whether Ms. Bargel made
3 the requisite payments or whether Defendant was justified in terminating her
4 policy. The record shows that payments of \$2,000 were made on August 30, 2017
5 and September 1, 2017. This payment history included payments up through
6 September 11, 2017. Defendant maintains that a \$2,000 payment was returned
7 from the bank as unpaid, but the proof in support of this statement is a Sept. 8,
8 2017 email detailing a returned payment from Leslie Bargel Holland. It is not clear
9 why this returned payment is not reflected in the payment history that was run on
10 September 11, 2017. Also, this email references WEBPAY, but Plaintiff stated she
11 made a payment by phone on 8/29/2017. This email is not sufficient to establish
12 that no adequate payments were made. In sum, genuine issues of material facts
13 exist that the jury will need to resolve regarding whether Plaintiff provided
14 adequate payments and whether the termination of JoAnn Bargel's life insurance
15 policy violated the contract, was in bad faith, violated the Consumer Protect Act,
16 or violated the Insurance Fair Conduct Act.

17 Accordingly, **IT IS HEREBY ORDERED:**

18 1. Defendant's Motion for Summary Judgment, ECF No. 9, is **DENIED**.
19 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
20 and forward copies to counsel.

21 **DATED** this 29th day of May 2019.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

26 Stanley A. Bastian
27 United States District Judge
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